

CHAPTER NO. 1106

HOUSE BILL NO. 2527

By Representatives Jackson, West, Armstrong

Substituted for: Senate Bill No. 2334

By Senator Rochelle

AN ACT to amend Tennessee Code Annotated, Title 63 and Title 68, relative to respiratory care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 63-6-402, is amended by deleting the language of subsection (1) and substituting the following language:

(1) "Board" means the Board of Respiratory Care.

SECTION 2. Tennessee Code Annotated, Section 63-6-402, is amended by deleting the language of subsection (2) and re-numbering the subsequent subsections appropriately.

SECTION 3. Tennessee Code Annotated, Section 63-6-402(4)(C), is amended by deleting the words "of medical examiners council on respiratory care."

SECTION 4. Tennessee Code Annotated, Section 63-6-402(5)(B), is amended by substituting the word "board" for the word "council" wherever it appears in that subdivision.

SECTION 5. Tennessee Code Annotated, Section 63-6-404(1)(A), is amended by deleting the words "or the council" in the first sentence, is further amended by deleting the words "by a majority of the members of the council on respiratory care and then shall be approved" and the words "or, alternatively shall be initiated and adopted by a majority of the members of the board, and shall then be approved by a majority of the members of the council" in the second sentence, and is further amended by substituting the word "board" for the word "council" and by deleting the words "and council" in the fourth sentence.

SECTION 6. Tennessee Code Annotated, Section 63-6-404(1)(B), is amended by deleting the words "all of the expenses of the council as well as" and the words "that are directly attributed to the performance of its duties pursuant to the provisions of this part".

SECTION 7. Tennessee Code Annotated, Section 63-6-404(2), is amended by deleting the words "the council and" in the first sentence, and is further amended by substituting the word "board" for the word "council" in the second sentence.

SECTION 8. Tennessee Code Annotated, Section 63-6-405(b), is amended by substituting the word "board" for the word "council" and by deleting the words "the council may approve and".

SECTION 9. Tennessee Code Annotated, Section 63-6-409(a), is amended by substituting the word "board" for the word "council" wherever it appears in that subsection.

SECTION 10. Tennessee Code Annotated, Section 63-6-409(b), is amended by substituting the word "board" for the word "council" wherever it appears in that subsection.

SECTION 11. Tennessee Code Annotated, Section 63-6-409(c), is amended by substituting the word "board" for the word "council".

SECTION 12. Tennessee Code Annotated, Section 63-6-409(e), is amended by substituting the word "board" for the word "council" wherever it appears in that subsection.

SECTION 13. Tennessee Code Annotated, Section 63-6-412(a), is amended by substituting the word "board" for the word "council" in the first sentence, and is further amended by substituting the words "board and division" for the words "board, division and council" in the second sentence.

SECTION 14. Tennessee Code Annotated, Section 63-6-412(b), is amended by deleting the words "council, subject to the approval of the" and by deleting the comma after the word "board".

SECTION 15. Tennessee Code Annotated, Section 63-6-412(c), is amended by substituting the word "board" for the word "council".

SECTION 16. Tennessee Code Annotated, Section 63-6-413(b)(2)(B), is amended by substituting the word "board" for the word "council".

SECTION 17. Tennessee Code Annotated, Section 63-6-413(b)(3), is amended by substituting the word "board" for the word "council".

SECTION 18. Tennessee Code Annotated, Section 63-6-414, is amended by substituting the word "board" for the word "council" in the fourth sentence.

SECTION 19. Tennessee Code Annotated, Section 63-6-415(1)(C), is amended by substituting the word "board" for the word "council".

SECTION 20. Tennessee Code Annotated, Section 63-6-415(2)(C), is amended by substituting the word "board" for the word "council" wherever it appears in that subdivision.

SECTION 21. Tennessee Code Annotated, Section 63-6-416(a), is amended by deleting the words "Notwithstanding provisions of Acts 1993, ch. 86 to the contrary and" and by capitalizing the word "with" in the first sentence, and is further amended by substituting the word "board" for the words "council of respiratory care" wherever they appear in that subsection.

SECTION 22. Tennessee Code Annotated, Section 63-6-416(b), is amended by substituting the word "board" for the words "council of respiratory care".

SECTION 23. Tennessee Code Annotated, Section 63-6-416(c), is amended by substituting the word "board" for the words "council of respiratory care" and for the word "council" wherever they appear in that subsection.

SECTION 24. Tennessee Code Annotated, Section 63-6-403, is deleted in its entirety and the following language is substituted in its place:

(a) A board is created which shall be known as the Board of Respiratory Care. This board shall consist of eight (8) members, who shall be appointed by the Governor in the manner and for the terms of office as provided in this section.

(b) The board shall be composed of four (4) members who are respiratory care practitioners holding a credential from the National Board for Respiratory Care, at least two (2) of whom shall be respiratory therapists; one (1) member who is a currently practicing physician having expertise in pulmonary medicine; one (1) member who is a hospital administrator; one (1) member who is a hospital employee licensed as a respiratory therapist; and one (1) citizen member who is not commercially or professionally associated with the health care field.

(c) Each member of the board shall:

(1) be a resident of Tennessee for at least one (1) year immediately preceding appointment and during the member's term;

(2) be currently licensed in good standing in Tennessee (in the case of a professional member); and

(3) have had at least three (3) years of experience in that profession (in the case of a professional member).

(d) The Governor may consider for appointment to the board the names of persons recommended by the professional organizations for each profession represented on the board. The Tennessee Society for Respiratory Care may submit a list of three (3) names for each position to be filled by a respiratory care practitioner. The Tennessee Medical Association may submit a list of three (3) names for the position to be filled by a physician having expertise in pulmonary medicine. The THA – An Association of Hospitals and Health Systems may submit a list of three (3) names for the position to be filled by a hospital administrator and a list of three (3) names for the position to be filled by a hospital employee licensed as a respiratory therapist.

(e) Each member shall serve a term of three (3) years, except that initially the members of the council on respiratory care shall become members of the board and shall remain members of the board until their terms on the council on respiratory care would have expired. The Governor shall stagger the terms of the remaining members he appoints to the board, so that the terms of either two (2) or three (3) members shall expire each year. A vacancy occurring on the board shall be filled by the board itself for the unexpired term of that member. At or before the expiration of a member's term, an organization named in (d) may submit three (3) names to the Governor for appointment to that position. Each member shall serve until his or her successor is appointed. Members are eligible for reappointment to successive terms.

(f) In making appointments to the board, the Governor shall strive to ensure that at least one (1) member is sixty (60) years of age or older, that at least one (1) member is a member of a racial minority, and that the gender balance of the board reflects the gender balance of the state's population.

(g) Each member shall be reimbursed for actual expenses incurred in the performance of official duties on the board, and in addition thereto, shall be

entitled to a per diem of fifty dollars (\$50.00) for each day's services in conducting the business of the board. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations promulgated by the Department of Finance and Administration and approved by the Attorney General and Reporter.

(h) Annually, the board shall choose a chairman and a secretary from among its members.

(i) The board shall hold at least one (1) regular meeting each year and such other meetings as the board determines necessary to conduct its business.

(j) A majority of the members of the board shall constitute a quorum for the transaction of business. No action of the board shall be valid unless approved by a majority of members present at a meeting at which there is a quorum.

(k) The Governor shall have the power to remove from office any member of the board for neglect of duties required by this chapter, for malfeasance in office, for incompetence, or for unprofessional conduct.

(l) The board shall deposit all monies received by the board into the State Treasury, and the Department of Finance and Administration shall make such allotments out of the board's account in the general fund as the department deems proper for the necessary expenses of the board.

(m) The division shall provide administrative, investigatory, and clerical services to the board as are necessary to implement and enforce the provisions of this chapter.

(n) On and after January 1, 1999, the board shall assume and fulfill all powers and duties heretofore assigned to the Council on Respiratory Care and the Board of Medical Examiners, and the rules heretofore adopted by the Council on Respiratory Care and the Board of Medical Examiners shall become the rules of the board on January 1, 1999, without further action by the board. The board shall consult with respiratory care professional organizations in the development of any additional regulations.

SECTION 25. Tennessee Code Annotated, Section 63-6-402(5), is amended by deleting the word "care" in the term "Respiratory care assistant."

SECTION 26. Tennessee Code Annotated, Section 63-6-402, is amended by deleting the language of subsections (6) and (7) and substituting the following language:

(6) "Respiratory technician" or "technician" means any person who has obtained the credential "Certified Respiratory Therapy Technician" (CRTT) from the National Board for Respiratory Care.

(7) "Respiratory therapist" or "therapist" means any person who has obtained the credential "Registered Respiratory Therapist" (RRT) from the National Board for Respiratory Care.

SECTION 27. Wherever the term "respiratory care assistant" is used in Tennessee Code Annotated, Title 63, Chapter 6, Part 4, the term "respiratory assistant" shall be substituted in its place.

SECTION 28. Wherever the term “respiratory care technician” is used in Tennessee Code Annotated, Title 63, Chapter 6, Part 4, the term “respiratory technician” shall be substituted in its place.

SECTION 29. Wherever the term “respiratory care therapist” is used in Tennessee Code Annotated, Title 63, Chapter 6, Part 4, the term “respiratory therapist” shall be substituted in its place.

SECTION 30. Tennessee Code Annotated, Section 63-6-402(4)(C), is amended by inserting the words “license or” between the words “a” and “certificate.”

SECTION 31. Tennessee Code Annotated, Section 63-6-404(1)(A), is amended by substituting the words “license and certificate holders” for the words “certificate holders, registrants” in the fourth sentence.

SECTION 32. Tennessee Code Annotated, Section 63-6-404(2), is amended by substituting the words “licenses” and “license” for the words “certificates” and “certificate” in the first sentence, and is further amended by substituting the word “licensure” for the word “certification” in the second sentence.

SECTION 33. Tennessee Code Annotated, Section 63-6-405(a), is amended by substituting the word “licensed” for the word “certified” wherever it appears in that subsection.

SECTION 34. Tennessee Code Annotated, Section 63-6-405(b), is amended by substituting the word “licensure” for the word “certification” and by substituting the word “license” for the word “certificate”.

SECTION 35. Tennessee Code Annotated, Section 63-6-409(a), is amended by substituting the word “license” for the word “certificate” wherever it appears in that subsection.

SECTION 36. Tennessee Code Annotated, Section 63-6-409(d), is amended by substituting the word “license” for the word “certificate”.

SECTION 37. Tennessee Code Annotated, Section 63-6-409(e), is amended by substituting the word “licensed” for the word “certified”.

SECTION 38. Tennessee Code Annotated, Section 63-6-411(a), is amended by substituting the word “license” for the word “certificate”.

SECTION 39. Tennessee Code Annotated, Section 63-6-411(b), is amended by substituting the word “licensed” for the word “certified”.

SECTION 40. Tennessee Code Annotated, Section 63-6-412(b), is amended by substituting the word “licensure” for the words “certification or registration” in subdivisions (1) and (2).

SECTION 41. Tennessee Code Annotated, Section 63-6-412(c), is amended by substituting the word “licensure” for the word “certification” and by substituting the word “license” for the word “certificate”.

SECTION 42. Tennessee Code Annotated, Section 63-6-413(b), is amended by adding the following language as a new subdivision (4):

(4) The certificate of a respiratory therapist or respiratory technician or respiratory assistant initially certified under subsection (a) shall be renewed as a license.

SECTION 43. Tennessee Code Annotated, Section 63-6-415, is amended by substituting the word "licensed" for the word "certified".

SECTION 44. Tennessee Code Annotated, Section 63-6-405(c), is amended by adding the following language as a new subdivision (3):

(3) Any person who is currently certified as a respiratory therapist, respiratory technician, or respiratory assistant under the provisions of this part shall be deemed to be licensed as a respiratory therapist, respiratory technician, or respiratory assistant, respectively, until the time of his or her next renewal. At the time of renewal, a person who has previously been issued a certificate shall be issued a license.

SECTION 45. Tennessee Code Annotated, Section 63-6-405(b), is amended by adding the following sentence at the end of that subsection:

After January 1, 2000, no person may be licensed as a respiratory assistant if that person has not previously been licensed as a respiratory assistant in Tennessee. However, persons who have been licensed as respiratory assistants may continue to renew their licenses indefinitely so long as they continue to meet all the requirements of this chapter.

SECTION 46. Tennessee Code Annotated, Section 63-6-405, is amended by adding the following language as a new subsection (d):

(d) A person licensed to practice as a respiratory technician may upgrade the license to respiratory therapist if the person furnishes evidence satisfactory to the board that he or she meets all the requirements to be licensed as a respiratory therapist. A person licensed to practice as a respiratory assistant may upgrade the license to respiratory technician or respiratory therapist if the person furnishes evidence satisfactory to the board that he or she meets all the requirements to be licensed as a respiratory technician or respiratory therapist. A person may not hold more than one (1) Tennessee license to practice respiratory care at the same time.

SECTION 47. Tennessee Code Annotated, Section 63-6-416(b), is amended by deleting the second sentence and substituting the following sentence in its place:

A temporary license shall automatically expire one (1) year from its date of issuance and may not be renewed.

SECTION 48. Tennessee Code Annotated, Section 63-6-414, is amended by substituting the words "a person who is training to become a respiratory assistant" for the words "an applicant" in the first sentence and by substituting the words "that person" for the words "the applicant" in the second sentence.

SECTION 49. Tennessee Code Annotated, Section 63-6-416(d), is deleted in its entirety and the following language substituted in its place:

(d) The board may authorize any of its members or its consultant to conduct a review of the qualifications of an applicant for a license or temporary license to practice respiratory care in this State and to make an initial

determination as to whether the applicant has met all the requirements for a license or temporary license. If the board member or board consultant determines that the applicant has met all the requirements for a license or temporary license, the applicant is then authorized to practice respiratory care in this State until the board makes a final decision on the application for a license or temporary license. The board may authorize the use of this procedure with respect to applicants for license renewal or reinstatement as well. In no event shall the temporary authorization issued pursuant to a determination made by the board member or board consultant be effective for longer than a six (6) month period measured from the date of issuance. This process shall not be utilized by the applicant more than once.

If temporary authorization, pursuant to this subsection, is issued to an applicant for a license to practice respiratory care in this State and if the subsequent decision of the board is to deny the application based upon a good faith determination that the applicant has not, in fact, complied with all the requirements for a license, then the doctrine of estoppel shall not apply against the State based upon its issuance of temporary authorization and its subsequent denial of licensure.

SECTION 50. Tennessee Code Annotated, Section 63-6-402(4), is amended by deleting the language of subdivisions (A) and (B), by relettering subdivision (C) as subdivision (B), and by adding the following language as a new subdivision (A):

(A) "Practice of respiratory care" means, under the supervision, control and responsibility of a licensed physician, the therapy, management, education and instruction, rehabilitation, diagnostic testing evaluation, and care of patients with deficiencies and abnormalities which affect the cardiorespiratory system and associated aspects of other system functions. The practice of respiratory care shall also mean, under the supervision, control and responsibility of a licensed physician, the performance of cardiorespiratory research, cardiorespiratory health promotion and disease prevention, and community wellness and education programs. The practice of respiratory care shall include, under the supervision, control and responsibility of a licensed physician:

(1) The administration of pharmacologic agents and medical gasses necessary to diagnose, implement treatment, promote disease prevention, and provide rehabilitation to the cardiorespiratory system. In no event, however, shall a respiratory care practitioner prescribe controlled substances of any kind;

(2) The performance of specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, patient and family education, monitoring, treatment, maintenance of patient health status, and cardiorespiratory research including but not limited to pulmonary function testing, hemodynamic and physiologic monitoring and diagnosis of cardiac function, and specimen collection and analysis;

(3) The establishment and maintenance of the airways, bronchopulmonary hygiene, and cardiopulmonary resuscitation, and cardiac and respiratory life support; and

(4) The receipt and implementation of written and verbal physician orders and the development and implementation of care plans and protocols.

The practice of respiratory care may be performed in an inpatient or outpatient setting, clinic, hospital, nursing home facility, private dwelling, or other place deemed appropriate or necessary.

SECTION 51. Tennessee Code Annotated, Section 63-6-410, is amended by adding the following language as a new subsection (c) and by relettering the subsequent subsections:

(c) With respect to licensed health care professionals that lawfully engage in the practice of respiratory care within the scope of practice of their professions, the board may develop mechanisms and standards for ensuring the competency of such licensed professionals in their practice of respiratory care and may recommend to the health-related board for each such profession that that board adopt, by rule or otherwise, mechanisms and standards for ensuring competency in the practice of respiratory care; provided, however, the board shall have no authority to regulate a health care professional subject to regulation by another health-related board.

SECTION 52. Tennessee Code Annotated, Section 63-6-410(e), is amended by deleting the language of this subsection in its entirety and substituting the following language in its place:

(e) Nothing in this chapter shall prohibit an individual who holds a credential from the National Board for Respiratory Care entitled "Certified Pulmonary Function Technologist (CPFT)" or "Registered Pulmonary Function Technologist (RPFT)" from engaging in the performance of pulmonary function diagnostic testing.

SECTION 53. Tennessee Code Annotated, Sections 63-6-406(a) and 63-6-407(a), are amended by deleting the words "an American Medical Association approved respiratory care program" and substituting in their place the words "a respiratory care program approved by the Commission on Accreditation of Allied Health Education Programs or its successor organization or other accrediting organization recognized by the board."

SECTION 54. Tennessee Code Annotated, Section 63-6-417, is amended by deleting the language of that section in its entirety and substituting in its place the following language:

As a part of its licensing and regulation of home medical equipment providers under Tennessee Code Annotated, Section 68-11-226, the board for licensing health care facilities shall establish uniform standards to ensure the competency of persons who deliver and install respiratory equipment.

SECTION 55. The Tennessee Code Commission is requested to recodify Tennessee Code Annotated, Title 63, Chapter 6, Part 4, as a new chapter within Title 63 at an appropriate time.

SECTION 56. Tennessee Code Annotated, Section 4-29-226(a), is amended by deleting item (3) in its entirety.

SECTION 57. Tennessee Code Annotated, Section 4-29-221(a), is amended by adding a new item thereto, as follows:


() Board of Respiratory Care, created by § 63-6-403;


SECTION 58. Tennessee Code Annotated, Section 63-6-410(a)(1), is amended by deleting the language "or" at the end of item (A), by deleting the punctuation "." at the end of item (B), and by adding the following language immediately after item (B):
; or

(C) Any person from performing the practice of clinical perfusion or from acting as a clinical perfusionist.

SECTION 59. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 29, 1998


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this day of 1998

DON SUNDQUIST, GOVERNOR

Pursuant to Article III, Section 18, of the Constitution of the State of Tennessee, the Governor had House Bill No. 2527 in his possession longer than ten (10) days, so therefore the bill becomes law without the Governor's signature.